

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10481 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO
2. To be referred to the Reporter or not? NO
3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? NO

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REJENDRA KUMAR HUSMUKHLAL

Versus

STATE OF GUJARAT

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Appearance:

MR MI HAVA for Petitioner  
MR G.N.PATEL ADDL.GOVERNMENT PLEADER  
for Respondent No. 1

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 04/11/96

ORAL JUDGEMENT

The competent authority and Deputy Collector at Surat on 19th October 1987 passed the order declaring 3559 sq.mts. of land in excess of the ceiling limit under Urban Land Ceiling Act, after his order dt. 19/9/1995 directing to file the form was quashed by Govt. on 9/6/1987 and matter was referred back for afresh consideration. Thereafter in revision, the Joint

Secretary, Revenue Department, on 16th June 1993 reviewing the order of the competent authority under Sec.34, declared that in all 7302 sq.mts. of land was in excess of the ceiling limit. The petitioner has in the result challenged the legality and propriety of both the orders in this writ petition.

2. Lallubhai Haribhai at the relevant time was holding the land bearing Survey No. 501/1 admeasuring 23763 sq.mts. and S.Nos. 142 and 143 admeasuring 8802 sq.mts. of land situated within the local limit of Katargam. Lallubhai Haribhai had a son Hasmukhbhai who was the father of the present petitioner. He expired on 22nd July 1975, while Lallubhai Haribhai expired on 7th April 1978. The Urban Land Ceiling Act (for short 'the Act') came into force on 17th February 1976. The petitioner filled up the form under Sec.6(1) of the Act declaring the above stated two lands. On 19th September 1985, the competent authority granted exemption of Survey No.501/1 being the agricultural land and used as such till then. So far as land bearing Survey Nos. 142 and 143 is concerned, the competent authority granted six units and held that when each of the Units was entitled to retain the land to the extent of 1500 sq.mts., there was, in fact, no land in excess of the ceiling limit. He then closed the chapter. Against that order, the Government preferred to review the same under Sec.34 of the Act on 9th June 1987. The Secretary, exercising revisional powers, held that the competent authority had not decided the case in accordance with law. He ought not to have considered the six Units on per capita basis but on the basis of the strip. The matter was sent back for afresh consideration. The competent authority again on 19th October 1987 passed the impugned order. As per that order the land bearing Survey No.501/1 being agricultural land was required to be excluded totally, but the land bearing Survey Nos. 142 and 143 was to be taken into account. That land was admeasuring 8802 sq.mts.. Therefrom he deducted 405.67 sq.mts. under the head Road Margin, 1230.77 sq.mts. under the head Side Margin, 66 sq.mts. under head Well and 229.74 sq.mts. under the head Cattle tethering Shed. In all therefore he deducted 1926.18 sq.mts. After doing so, 6876 sq.mts. of land, remained on hand. Looking to the pedigree of Lallubhai Haribhai, according to the competent authority, Shantilal Lallubhai, Hasmukhbhai Lallubhai and Lallubhai Haribhai being three Units, were having the share to the extent of 2292 sq.mts. As Lallubhai Haribhai died on 7th April 1978, his share was divided and Haribhai Lallubhai, the father of the petitioner was, according to him, entitled to 375 sq.mts. of land. In all therefore Haribhai Lallubhai was entitled to 2667 sq.mts. of land.

Hasmukhbhai Lallubhai left behind him a widow, two sons and two daughters. Each one was entitled to 533.4 sq.mts of land. Considering such Units, the competent authority found that in fact the petitioner was having no land in excess of the ceiling limit although other units were holding excess land which in all came to 3559 sq.mt. That order was reviewed by the Government under Sec.34 of the Act. On 16th June 1993, the Joint Secretary, Revenue Department, disagreeing with the reasonings and findings of the competent authority, held that the total area of 8802 sq. mts. of land bearing Survey Nos. 142 and 143 ought to have been considered to be the land belonging to the petitioner and therefrom, the land retainable by one Unit ought to have been deducted, and so he accordingly deducted only 1500 sq.mts. of land and found that rest of the lands admeasuring 7302 sq.mts. was in excess. He did not consider Road Margin, Side Margin and Cattle tethering Shed and also other Units in the family who were entitled to retain the land. Being aggrieved by such orders, the petitioner has filed this petition calling in question the legality and propriety of the orders.

3. First and foremost contention advanced on behalf of the petitioner is that the Secretary has not assigned any reason for reaching the conclusions against the petitioner. It is held by the Apex court in the case of T.R.Thandur Vs. Union of India and Ors, 1993(3) SCC 690 that the authority passing the order has to assign the reasons so that the order can be tested judicially as and when it is challenged. If the reasons are not assigned, the order passed cannot be maintained. In this case, the Secretary has not assigned the reasons and simply reached the conclusions about excess of the land deducting 1500 sq.mts. of land from the total area which a single Unit is entitled to retain. For such computation, when no reason is assigned, the order is liable to be quashed on that count, but there are other reasons to quash the order which I would now like to deal with.

4. The land on which construction is not permitted, cannot be treated to be the land within the meaning of Urban Land Ceiling Act and that land is required to be excluded from the computation. The road margin land, side margin land are the lands on which the construction is not permitted. The area of the land covered by the road margin and side margin therefore ought to have been excluded while computing about the ceiling limit. The land covered by the construction is also required to be excluded. In this case, there was a well and also a cattle shed. The same are also not taken into account

while computing the ceiling limit.

5. When Act came into force, Lallubhai Haribhai, his son Shantilal and daughter Kusumben were alive. Today also, Shantilal and Kusumben are alive. Hasmukhbhai was the son of Lallubhai Haribhai but he was not alive. The Heirs of Hasmukhbhai are Kanchanben the widow, Deepakbhai, the petitioner, and Geetaben & Rekhaben the daughters.. They were all major on the date when the Act came into force. All these Units, in all seven, are not considered by the Secretary. While the competent authority considered only six Units, without giving even the notices to the other sharers in the lands. It is held in the case of Maneklal Mulchand Patel and Ors. Vs. The Competent Authority and Additional Collector, U.L.C., Ahmedabad and Others, 36(1) GLR 457 by this court that if without issuing the notice to the other sharers, the computation is made and order is passed, it is bad in law and cannot be allowed to stand.

6. For these reasons, the orders passed by the competent authority and the Secretary, Revenue Department, are liable to be quashed and set aside. Consequently the order passed by the competent authority, as the notices were not issued to the other sharers, while passing the order on 19th October 1986, is also liable to be quashed and set aside and the matter is required to be sent back for a fresh consideration.

7. In the aforesaid circumstances, the petition is allowed. The orders passed by the competent authority on 19th October 1987 and the Secretary, Revenue Department on 16th June 1993 under Sec.34 of the Act copies whereof are produced at Annexures C and D respectively, are hereby quashed and set aside. The form filled up by the petitioner is hereby restored to file and the same is referred back to the Competent Authority and Additional Collector for afresh consideration in accordance with law. He will decide the case within a period of three months from today. No order as to costs in the circumstances of the case. Rule is made absolute accordingly.

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